

that the negative impact of dislocation on workers is lessened to the extent possible. By providing for notice to the State dislocated worker unit, WARN notice begins the process of assisting workers who will be dislocated.

(g) *WARN not to supersede other laws and contracts.* The provisions of WARN do not supersede any laws or collective bargaining agreements that provide for additional notice or additional rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period. Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN, but may not reduce WARN rights.

§ 639.2 What does WARN require?

WARN requires employers who are planning a plant closing or a mass lay-off to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice. Not all plant closings and layoffs are subject to the Act, and certain employment thresholds must be reached before the Act applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. Damages and civil penalties can be assessed against employers who violate the Act.

§ 639.3 Definitions.

(a) *Employer.* (1) The term "employer" means any business enterprise that employs—

(i) 100 or more employees, excluding part-time employees; or

(ii) 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of hours of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a "reasonable expectation of recall" when he/she understands, through notification or through industry practice, that his/her employment with the employer has been temporarily interrupted and that he/she

will be recalled to the same or to a similar job. The term "employer" includes non-profit organizations of the requisite size. Regular Federal, State, local and federally recognized Indian tribal governments are not covered. However, the term "employer" includes public and quasi-public entities which engage in business (*i.e.*, take part in a commercial or industrial enterprise, supply a service or good on a mercantile basis, or provide independent management of public assets, raising revenue and making desired investments), and which are separately organized from the regular government, which have their own governing bodies and which have independent authority to manage their personnel and assets.

(2) Under existing legal rules, independent contractors and subsidiaries which are wholly or partially owned by a parent company are treated as separate employers or as a part of the parent or contracting company depending upon the degree of their independence from the parent. Some of the factors to be considered in making this determination are (i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from a common source, and (v) the dependency of operations.

(3) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as an employer.

(4) An employer may have one or more sites of employment under common ownership or control. An example would be a major auto maker which has dozens of automobile plants throughout the country. Each plant would be considered a site of employment, but there is only one "employer", the auto maker.

(b) *Plant closing.* The term "plant closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during any 30-day period at the single site of employment for 50 or more employees,